IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.N.BASHA

Criminal Original Petition No.20320 of 2007 &
M.P.Nos.1 & 2 of 2007

A.Rajeswari . . Petitioners/accused

Vs.

N.Ramesh . . Respondent/Complainant

* * *

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the order dated 28.06.2007 in C.C.No.10252 of 2004 pending on the file of the XV Metropolitan Magistrate Court, George Town, Chennai and quash the same.

For Petitioner :: Mr.P.V.Sanjeev

For Respondent :: Mr.S.Umapathy

O R D E R

Learned counsel for the petitioner submits that the petitioner has come forward with this petition seeking for the relief of setting aside the impugned order passed by the learned XV Metropolitan Magistrate rejecting the objection raised by the petitioner in respect of marking a particular document namely Ex.P1, the rental agreement.

2. It is submitted by the learned counsel for the petitioner that such document is not properly stamped and as such it cannot be used as an evidence in a case before the Court. It is also submitted by the learned counsel for the petitioner that the learned Magistrate without assigning any valid reasons simply rejected the objection raised by the petitioner in respect of marking a particular document namely Ex.P1 and the said non speaking order is liable to be set aside.

3. Per contra, learned counsel appearing for the respondent submits that initially at the time of marking the document namely Ex.P1, the petitioner/accused in this case has not raised any objection and subsequently raised such objection before

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the learned Magistrate. It is contended by the learned counsel for the respondent that only with a view to protract the proceedings the petitioner has resorted to such contention of raising the objection and now filed a present petition before this Court.

4. I have carefully considered the submissions made by the learned counsel on either side and also perused the impugned order passed by the learned Magistrate.

5. It is seen that the petitioner is facing trial for the alleged offfence under Section 138 Negotiable Instruments Act. The only grievance of the petitioner, in respect of this matter, is that the complainant said to have marked the document namely Ex.P1, the rental agreement, to prove the liability on the part of the accused herein in respect of the disputed cheque involved in this matter. A perusal of the materials available on record as well as the impugned order discloses that the petitioner has not filed any objection or any memo raising his objection. This Court is not able to see as to what is the exact objection raised by the petitioner herein. A perusal of the impugned order discloses that the following endorsement made on the respective dates :

> 25.05.2007
>
> Complainant present. Accused absent. Section 317 & for PW1 cross call on 13.06.2007
>
> 13.06.2007
>
> Both present. PW1 record and partly cross examined. call on 22.06.2007 for PW1 cross and reply from the complainant with respect to the objection raised by the accused counsel. Call on 22.06.2007
>
> 22.06.2007
>
> Both parties present. Both side submission heard with respect that the documents objections call on 28.06.2007 for orders in the objection.
>
> 28.06.2007
>
> Objection rejected for cross continuation. Call on 25.07.2007

It is also seen that the endorsement of the impugned order dated 28.06.2007 reads that objection rejected for cross continuation call on 25.07.2007. The usual procedure is that whenever there is any objection for marking any document if the Court once to allow the document to be marked, the Courts used to mention that particular document was marked with objection. But in this case, it is seen that the objection was rejected and the case is posted for further cross-examination of P.W.1.

6. It is also pertinent to note that the Hon'ble Apex Court in Bipin Shantilal v. State of Gujarat reported in 2001 Cri.L.J. 1234 has held as follows :

> "Whenever an objection is raised during evidence taking stage regarding the admissibility of any

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material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course. The Court however made it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed."

Therefore, it is crystal clear that in view of the above principle of law laid down by the Hon'ble Apex Court if there is any objection raised in respect of deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further. In this matter, the learned counsel for the petitioner brought to the notice of this Court that objection was raised by the petitioner for making Ex.P.1, landlord agreement, since the same is unstamped and therefore, requested the learned Magistrate to decide the question of legality of its admission in the absence of stamp duty payable before proceeding further.

7. This Court, considering the objections raised by the petitioner in the light of the principle of law laid down by the Hon'ble Apex Court in the decision cited supra, left with no other alternative except to set aside the order passed by the learned XV Metropolitan Magistrate, George Town, Chennai, in C.C.No.10252 of 2004 dated 28.06.2007 and direct the learned Magistrate to consider the objections raised by the petitioners in respect of marking the document Ex.P.1, and decide the same and only thereafter to proceed the with case in accordance with law. It is also made clear that the petitioner shall not protract and prolong the proceedings without any valid reason and the learned Magistrate is also directed to expedite the trial as expeditiously as possible in view of the fact that the case itself is relating to the year 2004.

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The criminal original petition is ordered accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The XV Metropolitan Magistrate,
George Town,
Chennai.

2. Do Thro' The Chief Metropolitan Magistrate, Egmore, Chennai.

+ 1 cc to Mr. P. V. Sanjeevi, Advocate SR No. 45536

JRG(CO)
SR/2.8.2007

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